

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1800 of 1995

with

CIVIL REVISION APPLICATION No 1803 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

DEEPAK N SOOD

Versus

MONABEN N SOOD

Appearance:

MC BHATT for the Petitioner

None presen for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/02/2000

COMMON ORAL JUDGEMENT

#. Heard learned counsel for the parties.

#. The facts of the case in nutshell are that the plaintiff-respondent instituted Regular Civil Suit No.101/87 in the court of Civil Judge (S.D.) at Pardi for permanent injunction. The defendant-petitioner resisted the suit. The learned Trial Court on the basis of the pleadings of the parties framed five issues in the suit. The plaintiff-respondent filed an application Exh.87 for grant of leave to amend the plaint. This application came to be rejected by the learned Trial Court under its order dated 28/11/1992. This order has been challenged by the plaintiff-respondent in this court by preferring Civil Revision Application. That Civil Revision Application was came to be allowed by this court and the application Exh.87 of the plaintiff-respondent was granted and she was permitted to amend her plaint as proposed. After amendment of the plaint, the learned Trial Court framed two additional issues i.e. issue Nos. 6 and 7 under its order dated 11/3/1994. The defendant-petitioner filed an application Exh.115 and prayed therein for deletion of these two issues. The learned Trial Court under its order rejected this application of the defendant-petitioner. Against this order the defendant-petitioner filed Civil Revision Application No.1803/95. This revision application was admitted by this court on 14/9/95 and the interim relief in terms of para 7(B) has also been granted meaning thereby the proceedings of the Regular Civil Suit No.101/87 were stayed.

#. The plaintiff-respondent filed Exh.111 and prayed therein for referring two issues i.e. issue Nos. 6 and 7 for decision thereof to the tenancy authorities constituted under the Bombay Tenancy and Agricultural Lands Act, 1948. The application aforesaid was came to be allowed by the learned Trial Court under its order dated 30/6/95 which order is challenged by the defendant-petitioner in the Civil Revision Application No.1800/95.

#. As these revision applications arise from the one and same suit and are between the same parties and the impugned orders also interconnected both are being taken up for hearing together and are being disposed of by this common order.

#. The application of the plaintiff-respondent Exh.111 is prior in time than the application Exh.115 filed by the defendant-petitioner. Two additional issues on the question relating to whether the defendant-petitioner is an agriculturist or not has been framed on the basis of the pleadings of the plaintiff-respondent added by

amendment of the plaint, in pursuance of the order of this court in the Civil Revision Application filed by her earlier. The issues relate to the question whether the defendant is an agriculturist or not. The same is exclusively to be adjudicated by the revenue authorities and rightly the plaintiff-respondent filed the application Exh.111 in the court to draw its attention and to refer the matter to the competent authority for adjudication. To have the counter-blast the defendant-petitioner filed this application Exh.115. The learned court below has not committed any error or illegality much less any material irregularity in exercise of its jurisdiction in rejecting the application filed by the defendant-petitioner Exh.115 for deletion of the issue Nos. 6 and 7. These issues are necessarily to be framed otherwise the very object and purpose of application of the plaintiff-respondent for amendment of the plaint would have become redundant. In fact, if those two issues are deleted it will amount to reviewing of order of this court in revision application filed by plaintiff-respondent earlier for amendment of the plaint and which has been granted. This application filed by the defendant-petitioner is not bona fide. It suffers from the voice of oblique motives. It appears to be an attempt on his part to delay the proceedings of the suit. The learned Trial Court in the facts of this case has not committed any material irregularity in exercise of its jurisdiction in passing of the order granting the application of the plaintiff-respondent Exh.111.

#. The learned counsel for the petitioner has failed to show how any failure of justice or irreparable injury will cause to the defendant-petitioner in case the impugned orders of the court below are allowed to stand.

#. In the result, both the revision applications fail and the same are dismissed. Rule is discharged in both the Civil Revision Applications. Interim relief granted stand vacated in these two matters. The suit out of which these revision applications have arisen is of the year 1987. The learned Trial Court is directed to dispose of the suit within a period of six months from the date of the receipt of the writ of this order or certified copy thereof, whichever is earlier.

(S.K.Keshote, J.)

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